THE HON'BLE SRI JUSTICE C.V. RAMULU

Friday, 28th day of December,2007

W.P.No.10180 of 2005

Between:-

G. Krishna & others … Petitioners

and

M/s. Sri Vijayarama Gajapathi
Cooperative Sugars Limited,
No.B1242 Kumaram, Bheemsingi,
Jhami Mandal, Vizianagaram
District, rep. by its Managing Director
and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.10180 of 2005

ORDER:

This Writ Petition is filed seeking a Mandamus declaring the letter (notice) No.VRS/2004-2005, dated 1-3-2005 and the consequential acceptance letter vide Rc.No.Nil/VS/Estt/2005/VRS, dated 21-4-2005 issued by the 1st respondent as arbitrary, illegal and without jurisdiction and consequently to direct the 1st respondent to continue the petitioners in service till they attain the age of superannuation and grant all consequential benefits.

According to the petitioners, they joined the service of the 1st respondent-sugar factory in the years 1976 and 1977. Subsequently, their services were regularized as per their eligibility during the year 1982. Recently, the Central Committee of National Federation of Cooperative Sugar Factory (NFCSF) inspected the 1st respondent-factory and recommended for restructuring of the staffing pattern. On the recommendations of the committee, 4th respondent issued G.O.Ms.No.263, dated 5-11-2004 for constitution of a committee for each cooperative sugar factory for restructuring and down sizing the employees/work force. As per the said G.O., a committee was constituted consisting of 2nd respondent as Chairman, District Cooperative Officer, Vizianagaram as member and the 1st respondent as member-convener. The committee is supposed to hold detailed discussions with the trade union representatives of workers and

consultants/advisors and reduce the employees/work force as per need and recommendations given by the central committee of NFCSF and those who are found surplus according to the report, shall be discharged through Voluntary Retirement Scheme (VRS). An impression was created in the minds of the employees by respondents 1 and 2 that aged persons, irregular employees and sick persons, who are interested to go on VRS i.e. 141 employees, out of which 64 regular and 77 seasonal, were likely to be declared as surplus and 1st respondent would take necessary steps as per the terms of G.O.Ms.No.16, dated 23-3-2001. But, surprisingly, 1st respondent without waiting till the committee's declaration as to surplus employees issued notice Rc.No.VRS/2004-05, dated 1-3-2005 stating that as prescribed in G.O.Ms.No.263, dated 5-11-2004 for implementation of VRS in the factory in consultation with all trade union office bearers only, acceptance time was fixed as 15-3-2005 (5 p.m.). Further, it was stated that the VRS applications were available with the time-keeper. All the workmen, who are regular and seasonal, were asked to fill up applications and hand them over to the time-keeper on or before 5.00 p.m. on 15-3-2005. But, if anybody does not opt for VRS, he will be removed from service as per law. In pursuance of the said notice, it appears, petitioners filed applications on 20-3-2005 seeking voluntary retirement and the same were accepted on 1-4-2005 and communicated to them on 27-4-2005 while they were contemplating to withdraw the same. In fact, petitioners filed letters on 28-4-2005 seeking to withdraw the applications made on 20-3-2005. Without considering the same, on 30-4-2005, they were relieved of the duties. According to the petitioners, they had submitted applications for VRS since it was stated that those who do not opt for VRS would be removed from service. They have withdrawn the VRS applications

before they could be given effect to from 30-4-2005. Therefore, they challenged the very notice of offer under the scheme dated 1-3-2005. Neither it is the intention of the committee that all the employees would be retired from service or all of them are sick and aged and, therefore, their withdrawal letters would be accepted and as such, the very notice dated 1-3-2005 and the consequential letters of acceptance of resignation on 21-4-2005 are liable to be declared as arbitrary, illegal and without jurisdiction. Even otherwise, the withdrawal letters were filed before the VRS was given effect to and as such, it must be deemed that the acceptance of voluntary retirement applications was illegal.

A detailed counter affidavit has been filed on behalf of the 1st respondent denying the allegations made by the petitioner. It is asserted that the principle laid down by the Supreme Court in the case of resignation, has no application to the cases of retrenchment of personnel under VRS. Further, the allegation that the petitioners were relived forcibly under the scheme and that options were obtained by playing fraud is totally baseless and devoid of any truth. The factory was running under heavy losses and was unable to meet even the electricity charges and telephone bills. In fact, the factory was totally closed during the seasons 2003 and 2004. In order to revive cooperative sugar factories, Government of Andhra Pradesh constituted a committee with technical advisors, which had submitted a report with certain remedial measures to revive the unit. In the report, it was pointed out that the sickness of the factory was due to certain factors including abnormally high incidence of wages due to heavy staffing pattern and, therefore, suggested to prune staffing pattern to its optimum level by implementing voluntary retirement/compulsory retirement schemes for which the State Government would provide

financial assistance. To achieve higher growth of production, certain minimum measures were suggested. One of the measures is to reduce the permanent employees to 144 as against the existing strength of 208, seasonal employees to 177 as against 255 and further directed to avoid NMRs totally. The committee also prescribed the staffing pattern. As per the guidelines and scheme evolved by the Government and after deliberations with the unions, a procedure was adopted and a decision was taken by the committee in consultation with the union to implement the VRS. All the employees were directed to exercise options and as per the guidelines, steps were taken to retire employees under the scheme, as per the present staffing pattern as suggested in the report submitted by the Technical Advisors. The posts held by the petitioners were directed to be abolished in order to retain the minimum strength. The applications of all the employees were screened by the committee taking into consideration the performance, ability etc., and accordingly, petitioners and others, totaling to 175, were retired from service. Except petitioners, all others accepted and left the service with Golden Shake Hand. Petitioners have to be blamed for themselves for not receiving the benefit offered under the scheme. As per the guidelines issued by the Government for implementation of the scheme in Paragraph 8(vii) of G.O.Ms.No.16, dated 20-3-2001, it is stipulated that once options for VRS are accepted, the related posts should be simultaneously abolished and not held in abeyance. In fact, the posts held by the petitioners were declared as surplus and were simultaneously abolished, after accepting VRS applications submitted by them. Therefore, the question of reconsideration of their claim for reinstatement does not arise. There is no necessity for the factory to revive the said posts. The allegation that the 1st respondent is taking

service of some employees from other factories/sources is absolutely incorrect. The Government vide Proceedings Rc.No.6981/05/G1, dated 15-7-2005 permitted the factory to take services of certain technical personnel as directed in the order to complete the overhauling works by constituting a committee with the Head of Departments of the Society under the Chairmanship of Person-Incharge purely on contract basis and on consolidated salary for the crushing season 2005-2006. Under the said proceedings, 11 posts were identified. The Commissioner of Cane and Director of Sugars in his letter dated 4-11-2006 informed that the Finance Department had desired to indicate clearly the posts required to be filled on contract basis. The committee had identified surplus staff in accordance with the guidelines prescribed in the G.O., i.e., sincerity, skill and ability with the assistance of departmental heads and thereafter, options exercised by the employees were accepted. Absolutely, the procedure followed for finalization of VRS under the guidance of the Chairman has got appreciation by one and all. By the time they have submitted their letters withdrawing resignations, resignations were already accepted. In any event, the committee has a right to consider individual cases, independent with that of options exercised by the individuals. Petitioners' cases were considered on merits and they were relieved from service under the scheme. Therefore, the order of retirement does not call for interference.

Respondents 3 and 4 filed a separate counter alleging that the committee has directed all the employees to exercise options for VRS to facilitate it to finalize the same. After due consideration of the options exercised by the employees, the cases of 175 employees were accepted on 24-4-2005 and they were relieved on 30-4-2005. Accordingly, the Managing Director of the 1st respondent-sugar factory

forwarded the VRS claims of the 175 employees for necessary sanction. After due verification of the proposals, Government, vide G.O.Ms.No.7, Public Enterprises Department, dated 24-6-2005, have sanctioned and released an amount of Rs.3,46,91,180/- to the Society for settlement of VRS benefits to its 175 employees. Further, the contention of the petitioners that the rule of reservation was not followed is not correct, since the Society called for applications from the employees, who were willing to go on VRS and accepted the options exercised and relieved them after cut-off date i.e. 30-4-2005. It is the discretion of the Society either to accept or reject the options exercised by the employees/workers. Therefore, petitioners have not made out any case seeking for interference of this Court.

Learned counsel for the petitioners strenuously contended that it is not a voluntary retirement scheme, but it is a compulsory retirement scheme introduced by the respondents and there was no option for the petitioner, but to submit applications seeking voluntary retirement. Though the petitioners opted to retire voluntarily as per the scheme dated 1-3-2005, on 20-3-2005, which was accepted on 21-4-2005, since petitioners have submitted withdrawal letters on 28-4-2005, it must be deemed that there was no application submitted by them seeking voluntary retirement. Therefore, relieving the petitioners on 30-4-2005 is arbitrary and illegal. In support of his contentions, learned counsel relied upon the decisions in **POWER FINANCE CORPORATION LTD. v. PRAMOD KUMAR BHATIA**[1], **J.N. SRIVASTAVA v. UNION OF INDIA**[2], **SAMBHU MURARI SINHA v. PROJECT & DEVELOPMENT INDIA & ANOTHER**[3], **SAMBHU MURARI SINHA v. PROJECT & DEVELOPMENT INDIA**[4], **BANK OF INDIA v. O.P. SWARNAKAR**[5], **PUNJAB NATIONAL BANK v.**

VIRENDER KUMAR GOEL[6], **SRIKANTHA S.M. v. BHARATH EARTH MOVERS LTD.**[7]

Whereas, Sri P.R. Prasad, learned counsel appearing for the 1st respondent submitted that in view of the financial doldrums of the respondent-factory and on recommendations of the committee set-up by the Government, the entire situation was reviewed and for the purpose of revival of the unit the committee, after consultation with the office bearers of trade unions, has evolved a scheme and as per the scheme, willingness was called for and the petitioners offered their willingness and, therefore, their applications were accepted. Further, the acceptance letters dated 21-4-2005 were communicated to the petitioners on 27-4-2005 and on 28-4-2005 petitioners have filed withdrawal letters. In fact, they were relieved on 30-4-2005. Therefore, the contention of the petitioners that before the voluntary retirement applications could be given effect to, though they are accepted, petitioners have withdrawn the applications and as such, the acceptance letters dated 21-4-2005 are no more in existence cannot be countenanced. The Writ Petition is devoid of merits and is liable to be dismissed.

I have given my earnest considerations to the respective submissions made by the learned counsel on either side and perused the impugned Proceedings and other material made available on record.

At the outset, it may be necessary to notice that during the course of arguments, it is submitted by the learned counsel on either side that out of 9 petitioners, petitioners 3 and 6 had withdrawn the Writ Petition; therefore, the same stood dismissed as against them. Insofar as petitioners 7,8 and 9 are concerned, their posts were altogether abolished before the VRS was introduced and thus, now we are

concerned with petitioners 1,2,4 and 5.

The facts, as noticed above, would indicate that on 1-3-2005, an offer was made by the 1st respondent-sugar factory inviting applications for voluntary retirement. Petitioners submitted their applications on 20-3-2005 willing to retire under the scheme. Their applications were accepted on 21-4-2005 and the same was communicated to them on 27-4-2005. Immediately thereafter on 28-4-2005, petitioners filed applications seeking to withdraw the applications filed by them expressing willingness to avail VRS on 20-3-2005. They had withdrawn their applications only on 28-4-2005 i.e. after acceptance of their resignations. Therefore, petitioners were relieved from service on 30-4-2005 as per the acceptance letters dated 21-4-2005. It also appears that certain posts were abolished and the strength was to be reduced in the interest of the factory. After consulting the trade unions and the other concerned, decision was taken to take voluntary retirement letter from each and every employee and to accept them only on the basis of merit seniority, sickness position etc., of each individual. Therefore, the contention of the petitioners that they were forced to file applications to go on VRS cannot be said to be true and correct. Only to enable the management to have persons with some production ability had evolved a scheme, after consulting the unions, seeking voluntary retirement applications from each and every employee. Even otherwise, it appears, the posts held by the petitioners had fallen in the abolished scheme while restructuring the staffing pattern of the factory. As such, it cannot be said that the scheme evolved is arbitrary and capricious. Further, as stated above, applications filed by the petitioners on 20-3-2005 were accepted on 21-4-2005 and they were served on the petitioners on 27-4-2005. Thereafter, the withdrawal letters were filed on 28-4-2005.

However, petitioners were relieved from their duties on 30-4-2005. As such, it must be deemed that the resignations of the petitioners were accepted in consonance with the guidelines evolved by the Government under its G.O. as per the recommendations of the committee. In the peculiar facts and circumstances of the case, it must be deemed that the resignations, which were accepted, were final and they cannot be withdrawn. In this case, even otherwise, the applications for voluntary retirement were accepted on 21-4-2005 and the same was communicated to the petitioners on 27-4-2005; therefore, the question of withdrawing such an option exercised by the petitioners on 20-3-2005 on 28-4-2005 does not arise. Further, petitioners stood relieved from duty with effect from 30-4-2005. In all 175 employees were relieved under VRS except the petitioners. In fact, after identifying surplus posts only, the VRS was offered to the petitioners.

In **PRAMOD KUMAR BHATIA**'s case (1 supra), it was held by the Apex Court that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end. To the same effect is the judgment in **SHAMBHU MURARI SINHA**'s case (3 supra).

In **J.N. SRIVASTAVA**'s case (2 supra), it was held by the Supreme Court that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has *locus poenitentiae* to withdraw the proposal for voluntary retirement.

In **SAMBHU MURARI SINHA**'s case (4 supra), relevant scheme did not stipulate that an employee opting for voluntary retirement would be disentitled to withdraw from voluntary retirement. Under such circumstances, the apex Court, following the cases referred to above,

held that even after the acceptance of application for voluntary retirement, but before the date of actual release from service, the employee did have locus poenitentiae to withdraw his proposal for voluntary retirement.

In **O.P. SWARNAKAR**'s case (5 supra), after surveying the entire case law regarding 'voluntary retirement scheme' observed that the Scheme is contractual in nature and, therefore, the right derived by the employees concerned, could be waived. The employees concerned having accepted a part of the benefit could not be permitted to approbate and reprobate nor can they be permitted to resile from their earlier stand.

In **VIRENDER KUMAR GOEL**'s case (6 supra), it was held by the Supreme Court as under:

> "16. We make it clear that the sentence, "accepted a part of benefit under the Scheme" appeared in our direction as noticed above, would include the withdrawal of the benefit and utilisation thereof. By no stretch of imagination, unilateral deposit of a part of benefit under the Scheme into the Bank account, that too after withdrawal of the application, would construe as to have accepted the part of the benefit under the scheme, when the same was neither withdrawn nor utilised by the employee concerned.
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> 17. In view of the discussion aforesaid. I.A. Nos. 1, 2 and 3 are allowed. The applicants shall be reinstated into their posts with continuity in service, back wages and all consequential benefits as are entitled to them under the Law. They shall, however, refund the entire amount deposited into their Bank accounts with interest accrued, if any, to the Bank. Full refund of the amount by the applicants would be the condition precedent for reinstatement. Mr. Mukul Rohtagi learned ASG submits that applying the principle of 'No Work No Pay', back wages should not be allowed to them on their reinstatement. We are unable to accept this contention. The applicants were out of their jobs for no fault of theirs. Even otherwise, party in breach of contract can hardly seek for any equitable relief."

In **SRIKANTHA**'s case (7 supra), it was observed by the Supreme Court as under:

> "26. On the basis of the above decisions, in our opinion, the learned counsel for the appellant is right in contending that though the

respondent-company had accepted the resignation of the appellant on January 4,1993 and was ordered to be relieved on that day, by a subsequent letter, he was granted casual leave from January 4,1993 to January 13,1993. Moreover, he was informed that he would be relieved after office hours on January,1993. The *vinculum juris* therefore, in our considered opinion, continued and the relationship of employer and employee did not come to an end on January 4,1993. The relieving order and payment of salary also make it abundantly clear that he was continued in service of the Company upto January 15,1993."

Learned counsel for the 1st respondent relied upon the decision in **N.RAMANATHA v. STATE OF KERALA**[8] wherein it was held by the Supreme Court that the power to create, continue and abolish any civil post is inherent in every sovereign Government. It is a policy decision exercised by the executive and is dependent on exigencies of circumstances and administrative necessity. The abolition of post may have the consequence of termination of service; but such termination is not dismissal or removal within the meaning of Article 311. Further, the exigencies of administration may require alterations in the establishment and creation of a new department. This is a governmental function and a policy decision.

Learned counsel for the 1st respondent further relied upon a decision of the Apex Court in **NOTIFIED AREA COUNCIL, PIPILI v. GAHAR MOHAMMAD**[9] wherein it was held that continuance or abolition of posts is within the power of an employer and decision in that regard cannot be interfered with by the courts unless it is arbitrary o r *mala fide.* Learned counsel also relied upon the decision in **MOHD.ANWAR ALI v. A.P. COOPERATIVE OIL SEEDS GROWERS FEDERATION LTD.**[10] wherein it was held that it is well settled law that a Government servant, on abolition of the post, is required to be either dismissed from service due to non-availability of post or may be

dealt with according to the policy. In the said case, on a detailed study by the expert committee, it was determined that certain posts are not required and, therefore, the said posts were abolished pursuant to the policy decision to implement the Voluntary Retirement Scheme for making the business of the organization viable. Under those circumstances, it was held that the policy decision cannot be said to be either illegal or unsustainable. This case is cited to show that voluntary retirement scheme can be introduced after abolition of certain posts.

Learned counsel for the 1st respondent also placed reliance on the judgment in **S. CHALAPATHI v. VICE CHAIRMAN-CUM-MANAGING DIRECTOR, APSIDCL**[11] wherein the petitioner gave an option for voluntary retirement. Subsequently he withdrew the same. But, by that time, the option was accepted and communicated to the petitioner. Therefore, it was held that the petitioner therein cannot claim withdrawal of his earlier offer and the acceptance of offer is not liable to be questioned on the ground that the funds were not released to be paid to the petitioner as per the scheme. Further, in **RAJENDRA v. STATE OF RAJASTHAN**[12] a claim was made by the employees working under certain schemes founded by the State Government and the posts were created for fulfilling needs of a particular project. Thereafter, the posts were abolished for want of funds. It was held that the decision to abolish the posts was taken, based on administrative and financial consideration and as such, the employer cannot be directed to continue the displaced persons.

From the above decisions, it is clear that the employer has got a right to take a decision for restructuring the staffing pattern/reducing the strength of the staff in view of economic constraints and keeping in

view, the viability of the organization. In this case, admittedly, a committee was constituted with the technical advisors. The committee submitted a report with certain remedial measures to revive the unit. One such remedial measure was restructuring of the staffing pattern/introduction of Voluntary Retirement Scheme while recommending for abolition of certain posts. Thus, the posts held by the petitioners were directed to be abolished in order to retain the minimum strength. The applications of all the employees were screened taking into consideration the performance, ability etc., by the committee and accordingly, petitioners and others totaling to 175 were retired from service. Thus, it is clear that the petitioners opted to retire under voluntary retirement scheme.

Then, the question remains as to whether the petitioners having opted to retire voluntary, could have withdrawn their options and whether, in the facts and circumstances of the case, they are entitled for reinstatement into service. The fact that the posts held by the petitioners were abolished is not in dispute. It is also not in dispute that before taking such a decision, various factors were considered by the committee, which recommended for restructuring of the staffing pattern in consultation with the employees' unions of the organization. Further, in the very scheme it was made clear that once the request under VRS has been accepted by the organization and communicated to the employees in writing, it shall not be open to the employees to withdraw the request. Even otherwise, since the posts held by the petitioners were abolished, the question of withdrawing the options exercised by them does not arise. Instead of dispensing with the services of the petitioners by way of termination etc., the organization has introduced VRS, which is more beneficial than that of termination etc. Further, pursuant to the Voluntary Retirement Scheme dated 1-3-

2005, the petitioners gave their option on 20-3-2005. The options were accepted on 21-4-2005 and they were served on the petitioners on 27-4-2005. On the next day i.e. on 28-4-2005, petitioners filed letters seeking withdrawal of the options exercised under the VRS. Pursuant to the options exercised on 20-3-2005, petitioners were relieved on 30-4-2005. Even if the acceptance letters were not communicated to the petitioners, that itself does not vitiate the Voluntary Retirement Scheme and permit the petitioners to join duty again. In the peculiar facts and circumstances of this case, the question of permitting the petitioners to withdraw the options exercised by them does not arise. Further, clause (4) of the guidelines framed under G.O.Ms.No.16, dated 22-3-2001 regarding Voluntary Retirement Scheme reads as under:

> "**4. ELIGIBILITY**
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> An employee, who has been identified by the management to be brought under the VRS can opt for the scheme within the prescribed time. If any employee, who has been identified by the management to be brought under VRS does not opt for VRS, he/she will be retrenched under the Staff Regulations/I.D.Act."

This is not a case where the petitioners sought voluntary retirement either as per the provisions of the Service Rules governing them or otherwise. They sought voluntary retirement under a scheme framed particularly on the recommendations of the committee for reducing as many as 175 posts, which were abolished. Firstly, petitioners have no option except to opt for voluntary retirement in view of the policy decision taken by the organization for reducing its strength, which is always available for the employer. Secondly, the VRS was introduced for the benefit of the employees whose posts were sought to be abolished. Thirdly, the withdrawal letters were received on 28-4-2005, after the service of acceptance letters on 27-4-2005. Therefore, the

contention that so long as the voluntary retirement was not given effect to (till 30-4-2005), petitioners are entitled to withdraw the options exercised by them on 20-3-2005 cannot be accepted in the peculiar facts and circumstances of this case.

For all the above reasons, the Writ Petition is devoid of any merit and is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No order as to costs.

28-12-2007

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[1] 1997(4) SCC 280
[2] 1998(9) SCC 559
[3] 2000(5) SCC 621
[4] 2002(3) SCC 437
[5] 2003(2) SCC 721
[6] 2004(2) SCC 193
[7] 2006(1) ALD 98 (SC)
[8] AIR 1973 SC 2641
[9] 2003(11) SCC 784
[10] 2003(6) ALD 400
[11] 2003(2) ALD 591 (DB)
[12] AIR 1999 SC 923